

April 25, 2003

Mr. Nickolas C. Murnion
Garfield County Attorney
P.O. Box 33
Jordan, MT 59337-0033

Re: Opinion from the Attorney General

Dear Mr. Murnion:

You have requested an opinion from the Attorney General as to the following question:

Is Garfield County required to obtain voter approval to authorize the county to impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year from both voted and non-voted levies for health care facilities in Garfield County?

Since your question can be answered by reference to the governing statutes as construed in a prior opinion of this office, it has been determined that this letter of advice rather than a formal opinion is appropriate in response to your question.

In 2001, the Montana legislature adopted fundamental changes to the manner in which local property taxes are assessed and accounted for. With reference to your question, the legislature repealed numeric limits on various local property tax levies for specific purposes and amended Mont. Code Ann. § 15-10-420 to cap local property tax levies at the number of mills required to raise the amount raised from property taxes in the prior year, adjusted for inflation. Thus, as you note in your letter, the ten mill limit on property taxes for county hospital purposes previously provided in Mont. Code Ann. § 7-6-2512 (1999) has been repealed, and Garfield County's property tax mill levy has been capped as provided in Mont. Code Ann. § 15-10-420 (2001).

In 49 Op. Att'y Gen. No. 5 (2001) (copy available on Department of Justice website), Attorney General McGrath held that the mill levy cap provided in Mont. Code Ann. § 15-10-420(1)(a) (2001) applies to all property tax mills levied by the county that are not

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expressly excluded from the cap, and not to the mills levied for individual purposes under statutes such as Mont. Code Ann. § 7-6-2512. In that opinion, the Attorney General held that the City of Great Falls' mill levy for airport purposes in FY 2002 was not limited by the number of mills levied in 2001. Rather, the city was permitted to levy enough mills to raise the same amount of money raised by its property tax levy for all purposes subject to the cap provided in Mont. Code Ann. § 15-10-420, adjusted for inflation as provided in the statute, and the local government had the discretion to allocate to the airport authority whatever amount it chose from the amount raised.

Under this interpretation of the statute, Garfield County is authorized to levy sufficient mills for FY 2004 to raise the amount raised from property taxes in FY 2003, adjusted for inflation. It is up to the county commission then to determine what portion of that revenue will be allocated to the county hospital. No election is required to authorize a levy sufficient to raise the amount allowed by the statute. Rather, Mont. Code Ann. § 15-10-425 quite clearly provides that an election is required only to impose a new mill levy, to increase a mill levy that is required by law to be submitted to voters, or to levy mills that would raise an amount in excess of the amount raised by property tax mills that are subject to Mont. Code Ann. § 15-10-420(1)(a) levied in the previous year, adjusted for inflation.

This letter of advice may not be cited as an official Opinion of the Attorney General.

Sincerely,

CHRIS D. TWEETEN
Chief Civil Counsel

cdt/jym